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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT MAURICE FARRELL,

Defendant and Appellant.

2d Crim. No. B289789  
(Super. Ct. No. 2015013221)  
(Ventura County)

Robert Maurice Farrell appeals an order denying a postjudgment motion to terminate his mandatory supervision and strike his three-year sentence enhancement imposed pursuant to former Health and Safety Code section 11370.2.<sup>1</sup> We conclude that the trial court understood and properly exercised its discretion. We affirm.

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<sup>1</sup> All statutory references are to the Health and Safety Code unless otherwise stated.

### *FACTUAL AND PROCEDURAL HISTORY*

On June 11, 2016, the Ventura County prosecutor charged Farrell by information with felony possession of heroin for sale and misdemeanor possession of methamphetamine. (§§ 11351, 11377, subd. (a).) The prosecutor also alleged as a sentence enhancement that Farrell had a prior drug conviction and served prior prison terms. (§§ 11370.2, subd. (a), 11351; Pen. Code, § 667.5, subd. (b).) Farrell entered a not guilty plea and also denied the enhancement allegations.

Farrell then litigated the constitutionality of the search warrant and supporting affidavit involved in his arrest. Following denial of his motion to quash and traverse the search warrant, Farrell entered a guilty plea to felony possession of heroin for sale. He also admitted the prior drug conviction and prior prison term allegations.

In accordance with a negotiated plea agreement, the trial court sentenced Farrell to a total term of five years: a two-year low term for the substantive count and a consecutive three-year term for the section 11370.2 enhancement. The court imposed a "split sentence" pursuant to Penal Code section 1170, subdivision (h)(5)(B), consisting of two years in the county jail and three years on mandatory supervision. The court also imposed various fines and fees based on Farrell's ability to pay, dismissed the remaining count and prison term allegations, and awarded Farrell 36 days of presentence custody credit.

The trial court sentenced Farrell on September 19, 2017. He did not appeal the judgment. Effective January 1, 2018, section 11370.2 was amended to limit its reach by authorizing sentence enhancement only for prior convictions that involved using a minor to commit drug-related crimes. Farrell's prior

conviction, possession of drugs for sale (§ 11351), was removed from the list of prior convictions that required a three-year enhancement.

On February 13, 2018, Farrell filed a motion petitioning the trial court to strike the three-year enhancement of section 11370.2 in view of the newly amended statute. Farrell argued that his three-year mandatory supervision period was now an “unauthorized sentence” and that the rule of *In re Estrada* (1965) 63 Cal.2d 740, 745, (*Estrada*) required that the three-year enhancement be struck. At oral argument of the motion, Farrell argued that the court had “the obligation” as well as “the discretion” to strike the enhancement.

Farrell appeals and contends that the trial court erred by not terminating his mandatory supervision based upon an ameliorative change in the law.

### *DISCUSSION*

Farrell argues that the trial court did not appreciate its discretion to terminate or modify his mandatory supervision period imposed pursuant to Penal Code sections 1170, subdivision (h)(5)(B), 1203.2, and 1203.3. He asserts this argument independent of any contention of retroactive application of newly amended section 11370.2.

Farrell correctly concedes that newly amended section 11370.2 does not apply to him. The amendments became effective on January 1, 2018, after Farrell's judgment became final. (*People v. Millan* (2018) 20 Cal.App.5th 450, 455 [judgment becomes final when the availability of an appeal and the time for filing a petition for certiorari with the United States Supreme Court expires].) Having taken no appeal, the rule of *Estrada*, *supra*, 63 Cal.2d 740, 745, does not save Farrell.

Penal Code section 1170, subdivision (h)(5)(B) provides that mandatory supervision "may not be earlier terminated except by court order. Any proceeding to revoke or modify mandatory supervision under this subparagraph shall be conducted pursuant to either subdivisions (a) and (b) of Section 1203.2 or Section 1203.3." Penal Code section 1203.2, subdivision (b)(1) permits a trial court to modify or terminate mandatory supervision, and provides, "Upon its own motion or upon the petition of the supervised person, . . . the court may modify, revoke, or terminate supervision of the person . . . ." Penal Code section 1203.3, subdivision (a) provides, "The court shall . . . have the authority at any time during the term of mandatory supervision . . . to revoke, modify, or change the conditions of the court's order . . . ." Thus, these statutory provisions authorize the trial court to exercise its discretion to modify or terminate mandatory supervision. (*People v. Camp* (2015) 233 Cal.App.4th 461, 470.)

Farrell has not established that the trial court misunderstood its discretion pursuant to the applicable statutes or that it abused its discretion. Farrell did not provide the court with grounds to justify a modification of his plea-bargained sentence. His motion did not contain a declaration or other evidence establishing good cause or changed circumstances. Farrell also failed to present testimony or a current probation report at the hearing supporting a modification. Indeed, the thrust of his written motion and oral argument concerned application of the *Estrada* rule.

Absent a showing to the contrary, we presume that the trial court understands and follows applicable law. (*People v. Braxton* (2004) 34 Cal.4th 798, 814; *People v. Galvez* (2011) 195

Cal.App.4th 1253, 1264.) We also presume that the court properly exercises its sentencing discretion. (*People v. Weddington* (2016) 246 Cal.App.4th 468, 492.) Farrell points to the court's statements regarding resentencing pursuant to other sentence-reduction propositions as suggesting that the court was unaware of its discretion to strike his mandatory supervision period. We disagree with Farrell's interpretation of the court's remarks. The court's statements concerning the scope of resentencing do not demonstrate it believed that it lacked discretion to modify the sentence. It simply rejected the argument that it was obligated to do so.

The order is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Bruce A. Young, Judge

Superior Court County of Ventura

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Todd W. Howeth, Public Defender, William M. Quest,  
Senior Deputy, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief  
Assistant Attorney General, Lance E. Winters, Assistant  
Attorney General, Scott A. Taryle, Margaret E. Maxwell, Deputy  
Attorneys General, for Plaintiff and Respondent.